

1 duration of one's confinement are properly brought in a habeas action, whereas requests for relief
2 turning on the circumstances of one's confinement are properly brought in a § 1983 action.
3 *Muhammad v. Close*, 540 U.S. 749, 750 (2004) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 500
4 (1973)); *see also* 28 U.S.C. § 2254(a) (“[A] district court shall entertain an application for a writ
5 of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only
6 on the ground that he is in custody in violation of the Constitution or laws or treaties of the United
7 States.”); Advisory Committee Notes to Rule 1 of the Rules Governing § 2254 Cases.

8 Because petitioner's claim challenges the conditions of his confinement as opposed to the
9 legality or duration of his confinement, his claim is not cognizable in this federal habeas action.
10 This action must be dismissed without prejudice to petitioner commencing a new action using the
11 court's form for a civil rights complaint filed by a prisoner.

12 Accordingly, IT IS ORDERED that:

- 13 1. The Clerk is directed to send petitioner a form for filing a civil rights complaint by a
14 prisoner; and
- 15 2. The Clerk is directed to randomly assign a United States District Judge to this case.

16 Further, IT IS RECOMMENDED that petitioner's application for a writ of habeas corpus
17 be denied.

18 These findings and recommendations are submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
20 after being served with these findings and recommendations, any party may file written
21 objections with the court and serve a copy on all parties. Such a document should be captioned
22 “Objections to Magistrate Judge's Findings and Recommendations.” Failure to file objections
23 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
24 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). In
25 his objections petitioner may address whether a certificate of appealability should issue in the
26 event he files an appeal of the judgment in this case. *See* Rule 11, Rules Governing § 2254 Cases


27 ////

28 ////

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(the district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant).

Dated: April 16, 2021.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE